

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONNA VALERIE EVANS,)
Plaintiff,) CASE NO. C13-5436-RAJ
v.)
CAROLYN W. COLVIN, Acting) ORDER OF REMAND FOR
Commissioner of Social Security,) PAYMENT OF BENEFITS
Defendant.)

The Court has reviewed the entire record, including the Administrative Record, the memoranda of the parties, and the Report and Recommendation of United States Magistrate Judge Mary Alice Theiler. It is therefore ORDERED:

(1) The Court adopts the Report and Recommendation¹;

¹ The court provides one clarification. In an unpublished decision, the Ninth Circuit opined that evidence from the development period is not required in order to establish that the impairment began before the end of the developmental period. *Hernandez v. Astrue*, 380 Fed. Appx. 699, 2010 WL 2171012, *1 (June 15, 2010) (unpublished). Rather, the agency may use its judgment when current evidence allows it to infer when the impairment began. *Id.* Nevertheless, the court agrees that the relevant timeframe for the subaverage intellectual functioning with deficits in adaptive functioning is before the age of 22, and the first prong of Listing 12.05C does not require consideration of a claimant's current adaptive functioning. *See Kennedy v. Colvin*, 738 F.3d 1172, 1176 (9th Cir. 2013) ("Listing 12.05C has three main components: (1) subaverage intellectual functioning with deficits in adaptive functioning initially manifested before age 22; (2) an IQ score of 60 to 70; and (3) a physical or other mental impairment causing an additional and significant work-related limitation.").

01 (2) The Court REMANDS this matter for payment of benefits; and
02 (3) The Clerk shall direct copies of this Order to all counsel and to Judge Theiler.

03 DATED this 18th day of June, 2014.

04 
05

06 The Honorable Richard A. Jones
07 United States District Judge